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July 8, 2002

VIA HAND DELIVERY

The Honorable Sara Kyle, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

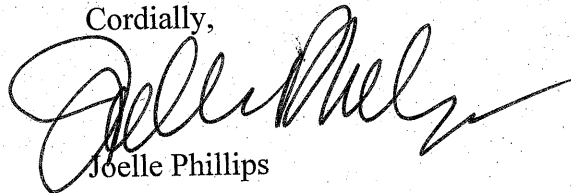
Re: *Docket to Establish Generic Performance Measurements, Benchmarks and Enforcement Mechanisms for BellSouth Telecommunications, Inc.*
Docket No. 01-00193

Dear Chairman Kyle:

Enclosed are the original and fourteen copies of BellSouth's Petition for Stay of Implementation of Deadlines Contained in the Order Dated June 28, 2002. Copies of the enclosed are being provided to counsel of record.

In light of the statutory changes enacted by the General Assembly, BellSouth is directing its filings to the attention of the Chairman of the Authority until otherwise instructed.

Cordially,



Joelle Phillips

JP/jej

Enclosure

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *Docket to Establish Generic Performance Measures, Benchmarks, and Enforcement Mechanisms for BellSouth Telecommunications, Inc.*

Docket No. 01-00193

BELLSOUTH TELECOMMUNICATIONS, INC.'S
PETITION FOR STAY OF IMPLEMENTATION OF DEADLINES
CONTAINED IN THE ORDER DATED JUNE 28, 2002

Pursuant to Tennessee Code Annotated §§ 4-5-316 and 4-5-322, BellSouth Telecommunications, Inc. ("BellSouth") respectfully requests that the Tennessee Regulatory Authority (the "Authority" or "TRA") stay the Amended Order Granting Reconsideration and Clarification and Setting Performance Measurements, Benchmarks and Enforcement Mechanisms, dated June 28, 2002 in this docket ("the Amended Order") pending reconsideration or appeal of three of the twenty measurements ordered to be implemented within ten days.¹ BellSouth respectfully shows the Authority as follows:

I. Standard For Issuance Of A Stay Pending Appeal.

Tennessee Code Annotated § 4-5-316 authorizes the Authority to stay the effectiveness of an order pending an appeal. The statute does not identify any specific factors that the Authority should consider. However, under Rule 62 of the Federal Rules of Civil Procedure, which is identical in all relevant respects to the equivalent state rule, a court is to consider the following factors:

- (1) the likelihood that the party seeking the stay will prevail on the merits of the appeal;
- (2) the likelihood that the moving party will be irreparably harmed absent the stay; (3) the

¹ As to the other measurements, BellSouth intends to comply with the order pending reconsideration or appeal. As discussed below, BellSouth seeks a stay regarding only those three measurements that BellSouth cannot implement in ten days. As to six of the twenty measurements, BellSouth can implement the measurements, with slight changes, which BellSouth believes would be sufficient to comply with the Order. While BellSouth seeks only a stay of one portion of the Amended Order by this petition, BellSouth expressly reserves the right to seek appeal, reconsideration or other available relief regarding all issues in this docket.

prospect that others will be harmed if the court grants the stay; and (4) the public interest in granting the stay.

Hilton v. Braunskill, 481 U.S. 770, 776, 107 S. Ct. 2113, 95 L.Ed.2d 724 (1987); *see also Michigan Coalition of Radioactive Material Users, Inc. v. Griepstrog*, 945 F.2d 150, 153 (6th Cir. 1991). These factors do not constitute prerequisites, each of which must be met for a stay, but rather are considerations that must be balanced together. *Id.* When these factors are balanced in this case, it is clear that a stay should be issued.

II. Application of the Standard to This Proceeding.

In the Amended Order, the Authority ruled that each ordered measurement be adopted in timeframes of, respectively, 10 days, 90 days or 6 months, based upon defined criteria. Specifically, the Authority identified the measurements that should be implemented within 10 days of the Final Order as: "measures currently in place in Tennessee or other states". (Order, pp 38-39).

Exhibit A to the Amended Order lists twenty (20) measures for which implementation is required within ten days of the date of the Order. These measures include:

1. OSS-1 Average Response Time & Response Interval (Pre-Ordering/Ordering)
2. OSS-4 Response Interval (M&R)
3. PO-1 Loop Makeup –Response Time / Manual
4. PO-2 Loop Makeup – Response Time – Electronic
5. O-1 Acknowledgement Message Timeliness
6. O-2 Acknowledgement Message Completeness
7. B-3 Percent Daily Usage Feed Errors Corrected in X Business Days
8. B-3A Percent Billing Errors Corrected in X Days
9. M&R-6 Average Answer Time – Repair Centers
10. C-1 Collocation Average Response Time
11. C-2 Collocation Average Arrangement Time
12. C-3 Collocation Percent of Due dates Missed
13. OS/DA – 1 Speed to Answer Performance/ Average Speed to Answer - Toll
14. OS/DA –2 Speed to Answer Performance/ Percent Answered within "X" Seconds
15. D-3 Percent NXXs and LRNs Loaded by the LERG Effective Date
16. E-1 E911 Timeliness
17. E-2 E911 Accuracy
18. E-3 E911 Mean Interval
19. TGP-1 Trunk Group Performance – Aggregate

20. TGP-2 Trunk Group Performance – CLEC Specific

BellSouth has reviewed these measurements and has determined that eleven can be implemented within the ten-day period in precisely the manner required by the Order.² Six more measures can be implemented in this timeframe if very minor format and reposting variations from the Order are allowed temporarily. Three measures cannot be implemented in the 10-day timeframe. However, these three measures require substantial changes and should, therefore, not be in the 10-day implementation category.

As to the six measures that can be implemented with slight variations in format and reporting, four require state specific reporting, and removal of the regional reporting results. These include the measures, (1) PO-1 Loop Makeup – Response Time – Manual, (2) PO-2 Loop Makeup – Response Time – Electronic, (3) TGP-1 Trunk Group Performance – Aggregate and (4) TGP-2 Trunk Group Performance – CLEC Specific. Based on the current structure of the reports for these measures, BellSouth can provide the state specific data, but cannot remove the regional data within the ten-day implementation process. In order to remove the regional data, BellSouth will have to write scripts used to generate the PMAP reports as well as the web display design related to these reports.

Also, BellSouth currently generates four reports for the measures: (1) OS-1 Speed to Answer Performance/Average Speed to Answer – Toll, (2) OS-2 Speed to Answer Performance / Percent Answered within "X" Seconds – Toll, (3) DA-1 Speed to Answer Performance /Average Speed to Answer – Directory Assistance (DA), and (4) Speed to Answer Performance/ Percent Answered within "X" Seconds – Directory Assistance). The Order requires that these be collapsed into two (2) measures: (1) OS/DA-1 Speed to Answer Performance/Average Speed to Answer – Toll and (2) OS/DA-2 Speed to Answer

² As stated in its Motion for Reconsideration, BellSouth cannot begin to report a measure in the middle of a month. Thus, in order to comply with the order, BellSouth has initiated each of these measures as of July 1, 2002. This means that, for these measures, actual compliance has been accomplished in one business day (from Friday, June 28, when the Amended Order was issued, until Monday, July 1).

Performance/ Percent Answered within "X" Seconds. BellSouth can report these measures separately, as they are currently reported, within the ten-day period.

Thus, with the above qualifications, the following measures can be implemented in the allotted time:

1. OSS-1 Average Response Time & Response Interval (Pre-Ordering/Ordering)
2. OSS-4 Response Interval (M&R)
3. PO-1 Loop Makeup –Response Time / Manual
4. PO-2 Loop Makeup – Response Time – Electronic
5. O-1 Acknowledgement Message Timeliness
6. O-2 Acknowledgement Message Completeness
7. C-1 Collocation Average Response Time
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10. OS/DA – 1 Speed to Answer Performance/ Average Speed to Answer - Toll
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15. E-3 E911 Mean Interval
16. TGP-1 Trunk Group Performance – Aggregate
17. TGP-2 Trunk Group Performance – CLEC Specific

The three measures that BellSouth cannot implement within the ten day period are: (1) B-3, Percent Daily Usage Feed Errors Corrected in X Days; (2) B-3A, Percent Billing errors Corrected in X Days; and (3) M&R-6, Average Answer Time – Repair Centers. With respect to the first two measures, the Authority adopted BellSouth's proposed substitute measures for the measures originally ordered, but changed the measures from diagnostic to parity with retail. Since these measures, as currently developed and designed, are produced as diagnostic measures, changing them to produce parity comparisons introduces numerous tasks that must be completed prior to implementation.

In its Motion for Reconsideration, BellSouth noted the numerous steps that are required each time a change is made to an existing measurement. (Motion, pp. 21 – 22). In particular, creating a parity basis for comparison requires statistical testing to generate performance results and penalty calculations. Also, the

coding necessary to introduce these changes would require a detailed description of the output requirements, reconciliation between the design and coding requirements, code development/testing, application code production, and output and presentation development. These steps cannot be completed within ten days.

Moreover, beyond the issues identified above, BellSouth does not have a comparable process to serve as a retail analog for the measure B-3A Percent Billing errors Corrected in X Day. Since a retail analog does not exist, a suitable standard and benchmark would have to be established prior to implementation of this measure. This will also delay implementation. For these reasons, implementation cannot be accomplished within the 10-day period.

As to the third measure identified above, M&R-6, Average Answer Time – Repair Centers, this metric is currently reported based on a parity comparison. The average answer time for CLEC repair centers is compared to the average answer time for BellSouth retail repair centers. Thus, the data provided to generate these reports are structured and fed to PMAP as an average answer time. The Authority ordered that reporting be done based on the percent of calls answered in a particular interval. To accomplish this, the structure of the data provided to create the reports will have to be changed. Interval buckets will then have to be established in PMAP to hold the data, which will later be compared to the associated benchmark established by the Authority. Thus, this measurement also cannot be implemented within 10 days.

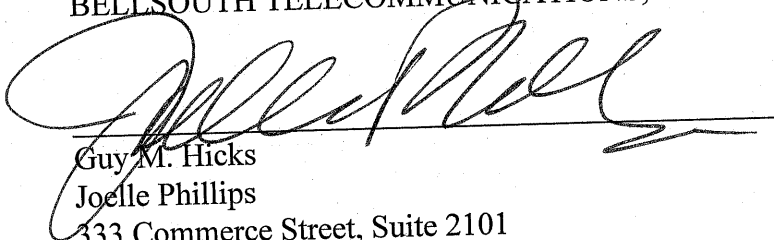
Finally, once again, the Authority's stated basis for establishing the 10-day implementation requirement, is that these "[m]easures [are] currently in place in Tennessee or other states". (Amended Order, pp 38-39). Under the application of this standard, these three measures should not be included on the list to be implemented in ten days, since, as noted above, each will require substantial modification.

BellSouth seeks this relief out of an abundance of caution, given that it is unable to meet the implementation deadlines discussed above, and, accordingly, could face enforcement of the order prior to the time it is capable of implementation. Consequently, BellSouth could face penalties for the failure to comply, even though it is simply unable to implement three of the measures ordered. It is axiomatic that a party is irreparably harmed when it faces the risk of sanction or penalty for the failure to do that which it is unable to do. *B.F. Goodrich Tire Co. v. Lyster*, 328 F.2d 411 (5th Cir. 1964) (finding that trial court erred when it sanctioned party for failure to obtain written answers when it was physically impossible for party to obtain such answers). Accordingly, BellSouth would be irreparably harmed in the event that this Order were not stayed pending resolution of the implementation issues noted above.

WHEREFORE, for all the foregoing reasons, BellSouth respectfully requests that the TRA stay that portion of its Amended Order in which it directed BellSouth to implement the measurements discussed above within ten days.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 8, 2002, a copy of the foregoing document was served on the following parties, via the method indicated:

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